IN THE

Supreme Court of the United States

October Term, 1979

No. 79-767

GEORGE D. HIME,

Respondent,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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1979—Northwest Brief Printing Co., 316 Chicago Avenue, Minneapolis 55415—338-5078

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, State Farm Fire & Casualty Company, hereby petitions for a writ of certiorari to review the opinion of the Minnesota Supreme Court issued on August 17, 1979.

(a) OPINION BELOW

The opinion of the Minnesota Supreme Court has not yet been officially reported. It appears in full as Appendix A hereto (pp. A-1-9, *infra*).

(b) JURISDICTION

(i) Original Judgment Sought to Be Reviewed.

The decision of the Minnesota Supreme Court was filed on August 29, 1979 and the judgment sought to be reviewed was entered on August 29, 1979. A copy of this judgment is annexed hereto as Appendix C.

(ii) Statutory Provision Conferring Jurisdiction.

The statutory provision which invokes jurisdiction in this Court of the petition for writ of certiorari is 28 U.S.C. §1257(3).

(iii) Cases Sustaining Jurisdiction.

Cases believed to sustain jurisdiction include: *Rush v. Savchuk*, No. 78-952 (Argued October 3, 1979); *World-Wide Volkswagen Corporation v. Woodson*, No. 78-1078 (Argued October 3, 1979); *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964); *Hartford Acc. & Indemn. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934); *Home Ins. Co. v. Dick*, 281 U.S. 297 (1930).

(iv) Constitutional Provision and Statute Involved.

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and a Minnesota statute precluding certain provisions in insurance policies issued in Minnesota, Minn. St. 65B.23 (repealed in 1974).

Section 1 of the Fourteenth Amendment to the United States Constitution, in pertinent part, provides:

> "No State shall . . . deprive any person of life, liberty or property, without due process of law. . . ."

Article 4 §1 of the United States Constitution, in pertinent part, provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. . . ."

The Minnesota Statutes involved, in pertinent part, provide:

> §65B.23—"No policy of automobile liability insurance as defined in Section 65B.14 written or renewed after 7-1-69 shall contain an exclusion for liability for damages for bodily injury solely because the injured person is a resident or member of an insured's household or related to the insured by blood or marriage."
>
> §65B.14, Subd. 1—" 'Policy of automobile liability insurance' means a policy delivered or issued for delivery in this state. . . ."

(c) QUESTION PRESENTED

Is the Minnesota Supreme Court constitutionally precluded by the Due Process and Full Faith and Credit Clauses from applying its own law because it lacks sufficient contact with the parties to this litigation? In other words, may Minnesota exercise control over, and change, the obligations of contracts elsewhere valid and validly consummated where to do so would enlarge petitioner's obligations in violation of the rule enunciated in *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930).

(d) STATEMENT OF THE CASE

George D. Hime is the named insured in an automobile liability policy issued by State Farm Fire & Casualty Company (State Farm). The policy was applied for, issued and delivered in 1966 to Hime in Florida. The automobile listed in the policy is licensed and garaged in Florida, where Hime resides with his wife, Gladys Hime.

The insurance contract contained the following language:

> "[State Farm agrees] (1) To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury by other persons * * *.
>
> "[Exclusions] (1) coverage A, to bodily injury to the insured or to any member of the family of the insured residing in the same household as the insured * * *."

The Florida courts have approved the validity of the above exclusion. *See Reid v. Allstate Ins. Co.,* 344 So.2d 877 (Fla. App.), aff'd 352 So.2d 1172 (Fla. 1977). In Minnesota, such an exclusion is prohibited in "a policy delivered or issued for delivery in this state." Minn. St. 65B.14, 65B.23.

While on vacation, the Himes were involved in an accident in Minnesota. Mrs. Hime brought suit against her husband in Minnesota for injuries sustained in the accident. State Farm declined coverage based on the household exclusion clause. After a judgment was entered against George Hime, he initiated the present action seeking coverage under the terms of his policy.

Cross-motions for summary judgment were filed in the District Court. Arguments were held on November 16, 1976, and the District Court granted Hime's motion on April 22, 1977 (A-10). The District Court Judgment was appealed to the Minnesota Supreme Court. The matter was initially argued before a panel of three justices on April 18, 1978. By Order of the Minnesota Supreme Court, additional briefs were filed, and the matter was again argued before the full court on March 30, 1979.

On August 17, 1979, the Minnesota Supreme Court affirmed the lower court, concluding that sufficient contacts existed with Minnesota to justify the application of Minnesota law to the Florida insurance contract and thereby extend petitioner's obligation to respondent beyond that stated in the insurance policy. The court believed that the "contacts with Minnesota [were] sufficient to ensure that application of Minnesota law in this case would not offend due process." The court, once having made this conclusion, then held that Minnesota law, rather than Florida law, should apply to determine coverage under the terms of the Florida insurance policy.

(e) REASONS FOR GRANTING THE WRIT

The Decision Below Is In Direct Conflict with the Principles Set Forth In *Home Ins. Co. v. Dick*, 281 U.S. 297 (1930), *Hartford Acc. & Indemn. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934), and *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964). The Application Of Minnesota Law To Change the Provisions Of A Valid Florida Insurance Contract, Based Solely On An Accident in Minnesota, Violates The Due Process Clause of The Fourteenth Amendment And The Full Faith And Credit Clause of The United States Constitution.

Even though a state has jurisdiction to hear a controversy, a state with jurisdiction can be constitutionally precluded by the Due Process and Full Faith and Credit Clauses from applying its own law if it lacks sufficient contacts with the parties. A series of United States Supreme Court decisions have established the limitations on a state to impose its law on controversies bearing little relationship to the forum state. The forerunner of these cases was *Home Ins. Co. v. Dick,* 281 U.S. 297 (1930). In *Dick,* a policy of insurance was issued to one Bonner in Tampico, Mexico by a Mexican company not authorized to do business in Texas. (Home Insurance Company was involved as a reinsurer of the Mexican company). The policy provided coverage for a vessel only while in specified Mexican waters. The policy premium was paid in Mexico. Prior to the loss, Bonner assigned the policy to Dick. Dick, a permanent resident of Texas, resided in Mexico from the time of the assignment to the time of the loss. The policy contained a provision which required institution of suit on the policy within one year of a loss—

a provision valid in Mexico, but invalid by statute in Texas.

A loss occurred, but no action was commenced until more than one year after the date of the loss. As might be expected, Dick then commenced the action in Texas, seeking to apply the Texas statute which forbade the shortening of any suit limitation to less than two years. The trial court ruled that the Texas statute was applicable and that Dick's claim was not barred by the contrary policy provision. The Texas Court of Civil Appeals and the Texas Supreme Court affirmed. The United States Supreme Court reversed. The Supreme Court held, at 281 U.S. 407-09:

> "The Texas statute as here construed and applied deprives the garnishees of property without due process of law. A State may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily, it may prohibit performance within its borders, even of contracts validly made elsewhere, if they are required to be performed within the State and their performance would violate its laws. But, in the case at bar, nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was ever done or required to be done in Texas. All acts relating to the making of the policy were done in Mexico. All in relation to the making of the contracts of re-insurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mex-

ico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law. . . .

* * *

"When, however, the parties have expressly agreed upon a time limit on their obligation, a statute which invalidates the agreement and directs enforcement of the contract after the time has expired increases their obligation and imposes a burden not contracted for.

"It is true also that a State is not bound to provide remedies and procedure to suit the wishes of individual litigants. It may prescribe the kind of remedies to be available in its courts and dictate the practice and procedure to be followed in pursuing those remedies. Contractual provisions relating to these matters, even if valid where made are often disregarded by the court of the forum, pursuant to statute or otherwise. But the Texas statute deals neither with the kind of remedy available nor with the mode in which it is to be pursued. It purports to create rights and obligations. It may not validly affect contracts which are neither made nor are to be performed in Texas."

Accordingly, the Texas court was without power to affect the terms of the insurance contract by imposing any greater obligation than that agreed upon by the insured and the insurer.

The next time the Supreme Court dealt with this issue was in *Hartford Acc. & Indemn. Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934). Plaintiff Delta & Pine

Land Company obtained from defendant, a Connecticut corporation, a fidelity bond. By the terms of the bond, defendant agreed to pay for losses caused by any of plaintiffs' employees "in any position, anywhere." Losses were caused by an employee in Bolivar County, Mississippi. At the time the bond was obtained, plaintiff was doing business in Tennessee, with its principal office in Memphis. Defendant also did business in Tennessee and the contract was obtained through defendant's Memphis agency. The bond required claims to be made within 15 months of the termination of the Suretyship. There was no statute in Tennessee prohibiting or invalidating the time limitation on the contract—a statute in Mississippi prohibited provisions which changed the statutory limitation periods.

By the time suit was brought, plaintiff had moved its principal place of business to Mississippi. Suit was brought in Mississippi. The courts in Mississippi held that the policy provision was contrary to the policy and law of the state of Mississippi, and awarded judgment in favor of plaintiff.

The United States Supreme Court reversed on the basis that the application of Mississippi law violated due process. The Court held, at 292 U.S. 149:

> "The Mississippi statutes, so construed, deprive the appellant of due process of law. A state may limit or prohibit the making of certain contracts within its own territory . . . but it cannot extend the effect of its laws beyond its borders so as to destroy or impair the right of citizens of other states to make a contract not operative within its jurisdiction, and lawful where made. . . . Nor may it in an action based upon such a contract enlarge the obligations of the parties

> to accord with every local statutory policy solely upon the ground that one of the parties is its own citizen. . . ."

In the present case, neither of the parties is a citizen of the State of Minnesota, and accordingly there is no justification whatsoever for enforcing Minnesota statutory policies on the parties in this action. The Court further stated, at 292 U.S. 149-50:

> "It is urged, however, that in this case the interest insured was in Mississippi when the obligation to indemnify the appellee matured, and it was appellant's duty to make payment there; and these facts justify the state in enlarging the appellant's obligation beyond that stipulated in the bond, to accord with local public policy. The liability was for the payment of money only, and was conditioned upon three events, loss under the policy, notice to the appellant at its home office, and presentation of claim within fifteen months of the termination of the suretyship. All of these conditions were of substantial importance, all were lawful in Tennessee, and all go to the obligation of the contract. It is true the bond contemplated that the employee whose faithfulness was guaranteed might be in any state. He was in fact in Mississippi at the date of loss, as were both obligor and obligee. The contract being a Tennessee contract and lawful in that state, could Mississippi, without deprivation of due process, enlarge the appellant's obligations by reason of the states alleged interest in the transaction? We think not. Conceding that ordinarily a state may prohibit performance within its borders even of a contract validly made elsewhere, if the performance would violate its laws . . . it may not, on grounds of policy, ignore a right which has lawfully

> vested elsewhere, if, as here, the interest of the forum has but slight connection with the substance of the contract obligations. Here performance involved at most only the casual payment of money in Mississippi. In such a case the question ought to be regarded as a domestic one to be settled by the law of the state where the contract was made. A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guarantees of the Fourteenth Amendment. . . ."

The final case of the three cases most frequently cited with respect to this issue is *Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179 (1964). Clay was a resident of Illinois when he purchased a "Personal Property Floater Policy (World Wide)" from defendant, a British company licensed to do business in Illinois, Florida, and other states. Shortly thereafter, Clay moved his property to Florida and became a citizen and resident of Florida. The defendant company knew that Clay had moved to Florida. Two years later, Clay sustained a loss when his ex-wife destroyed some of his property in Florida. The policy contained a provision requiring that any suit against the company be commenced within 12 months of the date of loss. Clay commenced an action in Florida later than one year from the date of the loss. The issue was whether Florida, consistent with due process requirements, could apply its five-year statute to the policy to negate the 12 month policy provision. The Court held that Florida had ample contacts with the trans-

action and the parties to satisfy any due process requirement.

The question, then, is whether the present case is controlled by *Dick* and *Delta & Pine Land Co.* or by *Clay*. *See* for a similar discussion the dissent of Justices Brennan and Douglas (the author of the *Clay* decision) in *Confederation Life Ins. Co. v. de Lara,* 409 U.S. 953 (1972). Are the contacts with Minnesota (1) wholly lacking (*Dick*), (2) too slight and casual to permit application of local law (*Delta & Pine Land Co.*) or (3) ample for application of forum law (*Clay*)? Of course, if the contacts are either slight or nonexistent, there is no need to even consider the choice-of-laws question. However, it appears clear that the issue of due process and the separate and distinct issue of choice-of-laws involve some overlapping considerations. What are the contacts with Minnesota?

(1) Plaintiff is a non-resident (plaintiff was a resident of the forum state in each of the three cases);

(2) Defendant, whose home office is in Illinois, does business in Florida, Minnesota, and other states (as did defendant in *Delta & Pine Land Co.* and *Clay*);

(3) The event giving rise to the litigation occurred in the forum state (as in *Delta & Pine Land Co.* and *Clay*);

(4) The forum state has a statute which is contrary to a provision of the insurance contract (as in all three cases).

(5) The policy in question provided coverage for losses occurring outside the state in which the contract was made (as in *Delta & Pine Land Co.* and *Clay*).

In comparing the contacts in the instant case with the contacts involved in the Supreme Court trilogy, this case falls into place between the *Dick* case and the *Delta & Pine Land Co.* case—the contacts are more than in *Dick* but less than in the *Delta & Pine Land Co.* case. The contacts fall far short of the "ample" contacts found in the *Clay* case. As a result, the application of Minnesota law to the instant controversy violates defendant's right to due process.

This precise issue has been decided in other states. The highest courts of New Jersey and Wisconsin, on facts virtually identical, have held that the policy must be enforced as written. *See, Empire Mut. Ins. Co. v. Melburg,* 67 N.J. 139, 336 A.2d 482 (1975); *Knight v. Heritage Mut. Ins. Co.,* 71 Wis.2d 821, 239 N.W.2d 348 (1976). It is ironic that had the accident happened 50 miles east, in Wisconsin, that the policy provision would have been enforced as the parties contracted and as it would have been if at anytime Hime would have had an accident in Florida. Should coverage which was not contemplated, which was not in the policy, and for which a premium was not charged, be forced on State Farm because Hime made it across the Minnesota border? It should not. Minnesota has no more contacts in this case than Wisconsin had in *Knight, supra,* or New Jersey had in *Melburg, supra.* Under these circumstances, it was improper for Minnesota, after erroneously concluding that sufficient contacts existed, to apply Minnesota law to expand the coverage of the policy.

(f) CONCLUSION

Petitioner respectfully prays that, for all the reasons set forth herein, this petition for writ of certiorari be granted.

Respectfully submitted,

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APPENDIX A

George D. Hime,

Respondent,

vs.

State Farm Fire & Casualty Company,

Appellant.

Hennepin County

Wahl, J.
Concurring specially,
Otis, J.
Endorsed
Filed August 17, 1979
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

1. Sufficient contacts with the State of Minnesota exist in this case so that due process would not be violated by the application of Minnesota law.

2. Application of Minnesota law to set aside the Florida automobile liability insurance contract clause, which excluded coverage for intra-family claims, was proper under the choice-influencing considerations set forth in Milkovich v. Saari, 295 Minn. 155, 203 N.W. 2d 408 (1973).

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

WAHL, Justice.

Defendant State Farm Fire & Casualty Company appeals from the order for summary judgment and judgment of the Hennepin County District Court, which set aside the family exclusion clause and ordered State Farm to indemnify its insured, George Hime, for a judgment against him for damages suffered by his wife arising from an automobile accident in Minnesota. We affirm.

On December 5, 1966, appellant issued an automobile insurance policy to respondent, a Florida resident. The policy recognized that the insured automobile would be principally garaged in Florida. It also contained the following intra-family liability exclusion, the enforceability of which is the subject of this litigation:

> "[State Farm agrees] (1) To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of (A) bodily injury by other persons * * *.
>
> "[Exclusions] (1) coverage A, to bodily injury to the insured or to any member of the family of the insured residing in the same household as the insured * * *."

The policy was renewed annually. Respondent and his wife resided at all times in the same Florida household.

On August 3, 1972, automobiles driven by respondent and a Minnesota resident were involved in a two-car accident in Minnesota. Respondent's wife, a passenger in respondent's car, was seriously injured and commenced suit against both drivers in Minnesota court. Gladys Hime

was awarded damages in the amount of $38,000, which were apportioned according to negligence in the amount of 60 percent or $22,800 against respondent, and 40 percent against the Minnesota driver. Appellant refused to defend or indemnify respondent because of the intra-family liability exclusion but paid Gladys Hime $4,424.25 in no-fault benefits pursuant to applicable Florida law.

Respondent commenced this indemnification action against appellant on June 11, 1976, prevailing in cross-motions for summary judgment before the trial court.

The issue on appeal is whether the trial court erred in applying Minnesota law to render ineffective the Florida insurance contract clause that excluded automobile liability coverage for intra-family claims.

The jurisdiction of the Minnesota courts over this matter being conceded, we limit our review to the conflict of laws question presented by this case.[1] To resolve this conflict, we consider initially whether the contacts with Minnesota are sufficient to make application of Minnesota law consistent with due process. Such contacts must not be too slight and casual. See, Clay v. Sun Ins. Office, Ltd., 377 U.S. 179, 182, 84 S. Ct. 1197, 12 L. ed. 2d 229 (1964).

---

[1]The choice between the Minnesota and Florida laws is determinative of the outcome of this case. The Florida courts have recognized the validity of provisions of automobile liability insurance policies that exclude from coverage members of the insured's family or household. See, e.g., Reid v. Allstate Insurance Co., 344 So. 2d 877 (D.C.A. Fla. 1977), affirmed, Reid v. State Farm Fire & Casualty Co., 352 So. 2d 1172 (Fla. 1977). To the contrary, Minnesota law has prohibited household or family exclusions in automobile liability insurance policies since 1969. See, Minn. St. 65B.23, repealed by Laws 1974, c. 408 § 33. Under the current Minnesota no-fault automobile insurance act, family and household members are included in the statutory definition of "insureds." See, Minn. St. 65B.43. subd. 5.

The contacts in this case arise both from the contract of insurance and from the tort, which initiates the insurer's performance of the contract. We do not restrict our review to the contacts arising from the contract. To do so would be to ignore the unique nature of automobile liability insurance. As the Supreme Court has recognized:

> "Insurance companies * * * do not confine their contractual activities and obligations within state boundaries. They sell to customers who are promised protection in States far away from the place where the contract is made." Clay v. Sun Ins. Office, Ltd. 363 U.S. 207, 221, 80 S. Ct. 1222, 1230 (1960) (Black, J., dissenting), quoted in Clay v. Sun Ins. Office, Ltd., 377 U.S. 179, 182, 84 S. Ct. 1197, 199.[2]

Moreover, the automobile liability insurance contract contemplates the occurrence of a tort. The transaction is a hybrid, overlapping the laws of tort and contract. See, Allstate Insurance Co. v. Sullam, 76 Misc. 2d 87, 349 N.Y.S. 2d 550, 558 (1973).

The contacts with the State of Florida arise from the contract itself. The contract was issued in Florida to a

[2]We note also the Supreme Court's decision in Watson v. Employers Liability Assurance Corp., 348 U. S. 66, 75 S. Ct. 166, 99 L. ed. 74 (1954). Watson involved a suit on an insurance policy issued by a Massachusetts insurance company and delivered in Massachusetts and Illinois, which contained a clause prohibiting direct actions against the insurance company. The plaintiff was injured by the product of the insured in Louisiana and sued the insurance company under Louisiana's direct action statute. The Supreme Court reversed the dismissal of the suit on the ground that Louisiana had a "legitimate interest in safeguarding the rights of persons injured there," 348 U. S. 73, 75 S. Ct. 170. The opinion recognized the interstate aspects of the case before it:

Florida resident on a vehicle principally garaged in Florida. Presumably, the premiums were paid in Florida. The contacts with the State of Minnesota, however, are significant. The appellant is licensed to do business in Minnesota and is subject to suit in our courts. The accident occurred here and involved a Minnesota resident in a Minnesota vehicle. The non-resident who was injured was hospitalized and treated in this state. Suit against both drivers was commenced here, and the case was tried in the courts of this state. We find these contacts with Minnesota sufficient to ensure that application of Minnesota law in this case would not offend due process.

Having concluded that due process would not be violated by application of Minnesota law, we apply our choice of law rules set forth in Milkovich v. Saari, 295 Minn. 155, 203 N.W. 2d 408 (1973) to determine which law governs in this case.[3] See, Schwartz v. Consolidated Freightways Corp. of Del., 300 Minn. 487, 221 N.W. 2d 665, 668 (1974). Under Milkovich, policy considerations

> "Some contacts made locally, affecting nothing but local affairs, may well justify a denial to other states of power to alter those contracts. But, as this case illustrates, a vast part of the business affairs of this Nation does not present such simple local situations. Although this insurance contract was issued in Massachusetts, it was to protect * * * against damages on account of personal injuries that might be suffered * * * anywhere in the United States * * *. As a consequence of the modern practice of conducting widespread business activities throughout the entire United States, this Court has in a series of cases held that more states than one may seize hold of local activities which are part of multistate transactions and may regulate to protect interests of its own people * * *."
>
> Thus, despite the contract clause prohibiting direct actions, petitioner's direct action was permitted.

[3]The efforts of the amicus curiae do not go unnoticed. While the amicus concisely and articulately sets forth an alternative approach to the resolution of conflicts questions, we are not persuaded that the alternative is preferable to the Milkovich analysis.

as well as contacts must be analyzed. Schwartz, 295 Minn. 155 at 493, 221 N.W. 2d at 669. Five choice-influencing considerations are involved: (1) predictability of result; (2) maintenance of interstate and international order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interest; and (5) application of the better rule of law.

Unlike the typical tort case, where only advancement of the forum's governmental interest and application of the better rule of law are relevant (See, e.g., Schwartz), this case, with traits of both torts and contract, requires consideration of all five factors. See, Hague v. Allstate, Insurance Co., — N.W. 2d — Minn. (1978), filed April 7, 1978.

(1) Predictability of Results.

As we observed in Hague, *supra,* the unplanned nature of automobile accidents lessens the importance of predictability of results in automobile insurance cases. Nevertheless, we note that the insured's protection has no geographical boundaries, at least not under the policy before us, and it is foreseeable that the insured may meet his misfortune out of the state of issuance. It was neither unusual nor unpredictable that the insured in this case, a former Minnesota resident, returned to visit his former home and that his vehicle was involved in an accident there. As was the case in Clay v. Sun, Ins. Office, Ltd., *supra,* the contract here in issue did not provide that the law of the issuing state would govern suits filed in other states. The transaction was not planned to have predictable results, and the insurer is not now justified in expecting

Florida law to govern absolutely in light of the extra-territorial effect and unique nature of the automobile insurance contract. As we said in Myers v. Government Employees Insurance Co., 302 Minn. 359, 365, 225 N.W. 2d 238, 242 (1974), predictability of results applies primarily to consensual transactions where the parties desire advance notice of which state law will govern in future disputes. This is not such a case.

(2) Maintenance of Interstate Order.

This concept involves consideration of the sufficiency of contacts between the forum state and the transaction. See, Hague, *supra.* The contacts that we have found sufficient to satisfy the due process also support application of Minnesota law under this choice-influencing consideration. In light of these facts, respondent cannot be regarded as simply forum-shopping with little genuine contact with the state.

(3) Simplification of the Judicial Task.

Because the Minnesota and Florida laws on the enforceability of the contract clause, which is central to this appeal, are equally clear, though contrary to each other, this consideration is not significant in this case. Either law could be applied without practical difficulty.

(4) Advancement of the Forum's Governmental Interest.

Our concern here, as in Milkovich v. Saari, *supra,* is that Minnesota courts not be called upon to determine issues under rules, which, however accepted they may be

in other states, are inconsistent with our own concept of fairness and equity. To apply Florida law in this case would be adverse to that interest, for the courts and legislature of this state have condemned household immunity clauses. See, Minn. St. 65B.23, repealed by Laws 1974, c. 408 §33. See, also, Beaudette v. Frana, 285 Minn. 367, 173 N.W. 2d 416 (1969), where we abrogated interspousal immunity in actions for tort. Providing recovery to those injured and treated within our borders is a legitimate state interest that was recognized by the Supreme Court in Watson v. Employers Liability Assurance Corp., 348 U.S. 66, 75 S. Ct. 166, 99 L. ed. 74 (1954). By applying Florida law to this controversy, respondent's wife, while holding a $22,000 judgment against her husband, would in effect be denied recovery. This result offends our idea of fairness and defies our concern for the welfare of visitors to this state.

(5) Better Rule of Law.

Because the foregoing considerations weigh in favor of applying Minnesota law, we need not dwell on this fifth factor. We simply note our reasoning in Beaudette v. Frana, *supra*. There we recognized that the social gain of providing tangible financial protection for those whom an insured wrongdoer ordinarily has the most natural motive to protect transcends the more intangible social loss of impairing the integrity of the family relationship. Similarly, this same social gain transcends the arguable social loss of impairing insurance contract provisions that provide for familial exclusions. The sanctity of such a contractual relationship is already diminished by the relative absence of

free negotiation, perhaps approaching the nature of a contract of adhesion. See, Ehrenzweig, 53 Colum. L. Rev. 1072, 1082 (1953). Our application of the Milkovich considerations leads us to conclude that Minnesota law should govern resolution of this controversy.

Affirmed.

OTIS, Justice (concurring specially).

I have no difficulty in distinguishing this case from Hague v. Allstate, —N.W. 2d-- (Minn. 1978), filed April 7, 1978, where Minnesota as the forum state had literally no contacts with any of the parties which were related to the accident when it occurred. For the reasons set forth in the dissent, in my opinion that decision applied the better rule of law unconstitutionally.

Here, on the other hand, the contacts of the parties with the State of Minnesota are substantial and there is every reason to apply what we all agree is the better Minnesota rule. Not only did the insured have ties with this state as a former resident visiting here, but the other driver was a resident of Minnesota; the accident occurred in Minnesota; and the injured party was treated in Minnesota. None of these contacts was present in the Hague case, however.

APPENDIX B

ORDER

FILE NO. 726761

The above-captioned matter came on for hearing before the undersigned, a Judge of this Court, sitting at Special Term on the 16th day of November, 1976, upon cross-motions for Summary Judgment.

F. Dean Lawson, Esq., appeared for and on behalf of plaintiff, J. Richard Bland, Esq., appeared for and on behalf of defendant.

The Court, having heard the arguments of counsel, and having read and considered the memorandas submitted at the hearing, and upon all the files, records, and proceedings herein, and the Court, being otherwise fully advised in the premises,

IT IS HEREBY ORDERED:

1. That plaintiff's motion for Summary Judgment be, and the same hereby is, granted.

Dated this 22 day of April, 1977.

/s/ PATRICK W. FITZGERALD
Judge of District Court

MEMORANDUM

This matter is before the Court upon cross-motions for Summary Judgment arising out of an action seeking a determination whether Minnesota or Florida law governs the insurance contract in question.

The events giving rise to this suit are simple and undisputed. Plaintiff and his wife are, and have at all times to the present, been residents of the State of Florida. On August 3, 1972, plaintiff became involved in an automobile accident in Minnesota in which plaintiff's wife, a passenger, was seriously injured.

On the basis of her injuries, plaintiff's wife commenced an action in Minnesota agianst her husband and the driver of the other vehicle involved in the accident. This action resulted in a judgment of $38,000 with plaintiff 60% at fault and plaintiff's co-defendant 40% at fault.

At the time of the accident, plaintiff and his wife were covered by an insurance policy which was applied for and issued in their home state of Florida. The premiums were also paid in Florida.

The instant plaintiff sought coverage under his Florida insurance policy for damages in the suit brought against him by his wife. Defendant State Farm, which had paid plaintiff's wife $4,424.25 under Florida's No Fault Act, denied plaintiff coverage on the basis of a household exclusion in his policy.

At the time of the accident, Florida still had interspousal immunity; the household exclusion was permitted in insurance policies. Minnesota had abolished interspousal immunity in 1969, *Beaudette v. Frana,* 285 Minn. 366, 173 N.W. 2d 416, and household exclusions are presently prohibited by statute in Minnesota. See, M.S.A. 65B.23.

The question is whether Minnesota or Florida law governs this insurance contract which was written, issued

and paid for in Florida under Florida law to residents of Florida for an automobile principally garaged in Florida but where the accident occurs in Minnesota and suit is brought in Minnesota.

The seminal Minnesota case on "conflicts of law" problems is *Milkovich v. Saari,* 295 Minn. 555, 203 N.W. 2d 408 (1973). In *Milkovich.* our Supreme Court crystalized a method of conflicts analysis earlier adopted by that Court in *Schneider v. Nichols,* 280 Minn. 139, 158 N.W. 2d 254 (1968). This methodology was formulated by Prof. Robert Leflar in his article, "Choice-Influencing Considerations in Conflicts Law," 41 N.Y.U.L. Rev. 267 (1966); it involves five basic "choice-influencing considerations:"

(A) Predictability of results;

(B) Maintenance of interstate and international order;

(C) Simplification of the judicial task;

(D) Advancement of the forums governmental interest;

(E) Application of the better rule of law.

Milkovich v. Saari, supra at 203 N W2d 412.

As counsel for defendant has pointed out, the application of these choice-influencing considerations in Minnesota have more commonly been associated with negligence law conflicts problems rather than with issues arising out of contracts.

Professor Leflar however applied his analysis to conflicts problems arising out of contracts as well as torts. He

noted, for example, that predictability of results is of primary importance in resolving "contracts" conflicts problems. See, Leflar, supra at 41 N.Y.U.L. Rev. 318 (case 8).

The Professor closed the above-cited article with twelve case hypotheticals and illustrated analyses employing his proposed methodology. The twelfth hypothetical example represents the essential facts presently before this Court:

> Case (12), H and W, husband and wife domiciled in State X, were traveling together by auto, H driving a car owned by H, registered and insured in X, when H by his negligent driving in State F injured W. By the law of X a wife may not recover from her husband in tort; by the law of F a wife may so recover. W sues H in F.

Leflar, supra, at 41 N.Y.U.L. Rev. 323. Professor Leflar applied his choice-influencing considerations to these facts in the following manner:

> There are many cases saying that husband-wife rights in tort are governed by the law of the place of the injury under a tort characterization, while others use a family law characterization to say that the law of the parties' marital domicile should govern. But the characterization technique does not get at the real issues here any more than in other problems.
>
> Predictability, (A), is practically unimportant here, as in cases (1), (2), and (5). Negligent injuries are not planned in reliance on one law or another. The interstate order, (B), is not particularly affected by the choice of law in husband-wife injury cases. Spouses

will travel together across state lines regardless of choice-of-law rules. The forum court can apply the other state's law as easily as its own; both are simple. No problem of efficiency in judicial administration, (C), is presented. It might be said that F has no governmental interest, (D), in applying its law to protect an X wife against her X husband (*or, more realistically to protect an X husband and wife against the insurance company that issued a liability policy to H in X),* when the only F contact was the accidental occurrence of negligent injury in F. *The fact is, however, that F as a typical American state is about as much interested in the welfare of visitors from sister states as in that of its own domiciliaries, especially when the visitors seek aid from F's courts on an F set of facts.* The conflicting interest in preventing collusive raids on insurance companies, if F attaches importance to this interest, has about the same weight for extrastate insurance contracts in an F court as for local ones. On this kind of case the nonresidence of the parties would not make such difference to F. *As to which state's law is better, (E), each court is entitled to its own opinion, and there is a real difference of opinion among courts on this kind of law. Probably F will believe that its own law is preferable, though it might not. It would be quite possible for a good court to go either way on the balance of choice-influencing considerations on these facts, though probably most courts in F's situation would apply their own law and permit W to maintain the action.* (Emphasis supplied).

With Professor Leflar's suggestion that a good Court could go either way on these facts, the undersigned has concluded that the balance of considerations in this case support the application of Minnesota's better law represented by *Beaudette v. Frana, supra,* and M.S.A. 65B.23 which forbids household exclusions in Minnesota insurance contracts, rather than the application of Florida's more archaic household exclusion.

While the general rule may be that an insurance contract is governed by the law of the place in which it is executed, the main governmental interest which this Court has in applying Minnesota's plainly better law:

> . . . is that of any "justice-administering state" . . . In that posture, we are concerned that our courts not be called upon to determine issues under rules which, however accepted they may be in other states, are inconsistent with our own concept of fairness and equity.
>
> *Milkovich, supra* at 203 N.W.2d 417.

While *Milkovich* may have involved a torts conflicts problem, the governmental interest remains the same where Minnesota courts are properly invoked to determine issues arising out of foreign insurance contracts.

Our Supreme Court has of course recognized defendant's suggestion that the application of the Leflar test is not unlimited:

> Once jurisdiction attaches, the forum may *subject to the rather minimal due process standards,* apply its

> own choice-of-law rules to determine what law governs the case . . .
> *Schwartz v. Consolidated Freightways of Delaware,* — Minn. —, 221 N.W. 2d 665, 668 (1974). (Emphasis supplied).

These due process standards are clearly met where a Florida automobile driven by a Florida resident collides with a Minnesota resident in Minnesota which then culminates in a lawsuit litigated in Minnesota;

> The courts of this state are open to those residents and non-residents alike who properly invoke, within constitutional limitations, jurisdiction of these courts. *Schwartz, supra* at 221 N.W.2d 669.

This Court recognizes that our sister state of Wisconsin has arrived at a different result in similar cases. See e.g., *Peterson v. Warren,* 31 Wisc. 2d 547, 143 N.W. 2d 560 (1966); *Urhammer v. Olson,* 39 Wisc. 2d 447, 159 N.W. 2d 688 (1968); *Knight v. Heritage Mutual Insurance Co.,* 71 Wisc. 2d 821, 239 N.W. 2d 348 (1976).

Despite these Wisconsin cases, the undersigned is persuaded that Minnesota, as a justice administering state called upon to provide a forum in which to litigate this case, should not determine this issue under rules which, however accepted they may be in Florida, are nevertheless inconsistent with our own concepts of fairness and equity.

The State of Minnesota has an interest in the welfare of visitors to this state who are properly in our courts as well as to its domiciliaries. Our own Supreme Court has condemned the plainly repugnant doctrine of inter-spous-

al immunity and our legislature has forbidden the attendant household exclusion in insurance contracts. Given these facts and since this matter is being litigated in our Courts, Minnesota law must apply.

For all of the foregoing reasons, this Court must conclude that plaintiff's motion for Summary Judgment must be granted.

LET THIS MEMORANDUM BE MADE PART OF THE FOREGOING ORDER.

P.W.F.

APPENDIX C

STATE OF MINNESOTA

ss.

SUPREME COURT

MANDATE

To the Honorable Judge and Officers of the District Court within and for the County of Hennepin Greeting:

Whereas, Lately in your Court, in action therein pending, entitled George D. Hime, Plaintiff, vs. State Farm Fire & Casualty Company, Defendant, a certain order and judgment was entered therein April 22 and 28, 1977 from which action of your Court an appeal thereafter was taken to this Court;

And Whereas, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order and judgment of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

Now Therefore, This MANDATE is to you directed and certified, to inform you of these proceedings in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith REMANDED to your

Court for such other or further record and proceedings therein as my be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Honorable ROBERT J. SHERAN, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this August 29, 1979.

JOHN McCARTHY
Clerk of the Supreme Court.
/s/ WAYNE TSCHIMPERLE, Deputy.

STATE OF MINNESOTA, SUPREME COURT

George D. Hime,

Respondent,

vs.

State Farm Fire & Casualty Company,

Appellant.

JUDGMENT

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order and judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondent herein, do have and recover of appellant herein the sum and amount of Four Hundred Sixty-Nine and 30/100 DOLLARS, ($469.30) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed August 29, 1979.

BY THE COURT
Attest:
JOHN McCARTHY, Clerk

STATEMENT FOR JUDGMENT

Statutory Costs $25.00 Printer $439.80 Postage and Express $4.50

Total $469.30

Satisfaction of Judgment filed

Therefore the above judgment is duly satisfied in full and discharged of record

Attest: Clerk.
By Deputy.

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-767

GEORGE D. HIME,

Respondent,

vs.

STATE FARM FIRE & CASUALTY COMPANY,

Petitioner.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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IN THE

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GEORGE D. HIME,

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Petitioner.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent George D. Hime hereby opposes the petition for a writ of certiorari to review the opinion of the Minnesota Supreme Court issued on August 17, 1979.

(a) OPINION BELOW

The opinion of the Minnesota Supreme Court is reproduced in Petitioner's Brief.

(b) JURISDICTION

As appears in the petition, other than to point out that *Rush v. Savchuk*, No. 78-952, and *Worldwide Volkswagen Corp. v. Woodson*, No. 78-1078, involving state long-arm jurisdiction, are wholly irrelevant.

(c) CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Respondent makes the following correction: Minn. Stat. §65B.23 was repealed in 1974 and replaced by Minn. Stat. §65B.43 (subd. 5)(3) which defines "insured" under Minnesota automobile insurance law as including a spouse or other relative residing in the same household as the named insured.

(d) QUESTION PRESENTED

Whether Minnesota has sufficient connection and interest in the subject litigation to constitutionally permit the application of Minnesota choice-of-law rules and Minnesota substantive law.

(e) STATEMENT OF THE CASE

On August 3, 1972, while traveling in Minnesota, Mr. and Mrs. George Hime were involved in an automobile accident with another vehicle owned and driven by a Minnesota resident. Mrs. Hime was seriously injured, and was hospitalized for 32 days in Minnesota. Mrs. Hime commenced an action in Minnesota against both the Minnesota driver and her husband, who requested coverage and tendered his defense to State Farm. Through one of its Minnesota offices State Farm denied coverage and refused the tender of defense on grounds that the policy, issued in Florida, contained a household exclusion clause. State Farm did assert subrogation rights under the policy to any recovery the Himes might obtain against the

Minnesota driver.

The action resulted in a judgment of $38,000 with causal negligence apportioned 60% to George Hime and 40% to the Minnesota driver. George Hime then brought a declaratory judgment action against State Farm seeking coverage for the damages assessed against him.

Personal jurisdiction of the Court over State Farm Insurance Company was undisputed at all times. The trial court held that the household exclusion, although valid in Florida, is not enforceable in Minnesota, since they are prohibited by statute (Minn. Stat. §65B.23) and since interspousal immunity has been abolished. *Beaudette v. Frana*, 285 Minn. 366, 173 N.W.2d 416 (1969). The Minnesota Supreme Court affirmed, after carefully evaluating Minnesota's connection and interests in the case, the applicable choice-of-law rules, and the substantive law.

Petitioner now seeks a Writ of Certiorari, based on its claim that Minnesota lacked sufficient contact with the case to constitutionally permit the application of Minnesota choice-of-law rules and forum law on household exclusions.

(f) REASONS FOR REFUSING THE WRIT

The decision below is wholly consistent with the controlling decisions of this Court and presents no novel or unsettled legal issue. Respondent's position rests on two simple and supportable premises:

(1) That the sum effect of this Court's decisions in this area is to require that the forum state have a substantial interest in and connection with the subject matter and parties to the litigation as a minimal threshhold requirement to any constitutionally permissible application of forum law in a true conflict situation.

(2) In the case at bar, the occurrence of a tort within the

forum state is a significant legal event in which Minnesota has sufficient interest and contact to satisfy the threshhold requirements of the due process clause, such that the decision below was a constitutionally permissable exercise of Minnesota choice of law rules and substantive law.

The constitutional limitations on state power to apply forum law over foreign law in conflict situations where nonresidents are involved in a local motor vehicle accident is an area which has caused minimal difficulty for courts, legislators or commentators.[1] The choice of law methods are themselves in a state of flux, but rarely is the constitutional power of a forum state to apply its own law disputed where that state has a substantial connection with the subject matter and parties involved. There is no question that the Court has set limits, but the case at bar falls well within them.

This Court's opinion in *Home Ins. Co. v. Dick*, 281 U.S.397 (1930) remains the basic decision regarding constitutional limits on choice of law. There Dick, the assignee of a policy issued in Mexico and limited to losses in Mexican waters, sued in Texas on a loss which had occurred in Mexico while Dick had resided in Mexico. The claim was brought after the policy's one-year limitation had run, a limitation valid in Mexico but invalid in Texas. This Court held the total lack of connection to the forum state rendered the application of Texas law constitutionally impermissible under the due process clause. "It (Texas) may not validly affect contracts which are neither made

[1]Of course there is considerable comment on the comparative wisdom of the various choice-of-law methodologies employed by the states. See, *e.g.*, Carpenter, *New Trends in Conflicts Rules Affecting Torts: A Chronological Review*, 1 Loy. U L J 187-233 (1970).

nor are to be performed in Texas." *Dick, Supra*, at 410. The *Dick* case set a valid "outer limit" rule limiting the permissibly applicable substantive law to that of states having a substantial connection with the facts and issues of the case.

In *Hartford Acc. & Indem. Co. v. Delta & Pine Land Co.*, 292 U.S. 314 (1934), the Court temporarily went beyond the "outer limits" established in *Dick*, reversing the refusal of a MIssissippi court to enforce a 15-month time limit on claims under a fidelity bond, a limitation valid in Tennessee where the bond had been issued, but invalid in Mississippi where the loss had occurred.

The *Delta & Pine Land Co* case has been characterized as a temporary "aberration,"[2] in light of subsequent decisions. *John Hancock Mutual Life Insurance Co. v. Yates*, 299 U.S. 178 (1936) fit very closely the "outer limit" rule attributed to *Home Ins. Co. v. Dick*. There, material false representations has been made in obtaining a life insurance policy issued in New York with a New York beneficiary. The representation made the policy void under New York law, but suit was brought in Georgia, the after-acquired residence of the beneficiary. This Court held that Georgia could not constitutionally apply its law because it had no substantial connection whatever with the substantive transaction sued on. Not only had the contract been made in New York, but the misrepresentations, which were the subject of litigation, had also been made there.

The basic rule was clarified in *Watson v. Employers Liability Assurance Corp.*, 348 U.S. 66 (1954). There, a product liability insurance contract, delivered in Massachusetts, contained a clause prohibiting direct actions against the carrier until and

[2]Leflar, *American Conflicts Law* (3d Ed. 1977).

after final determination of the insured's obligation to pay damages. Plaintiff, a Louisiana resident, was injured by a product manufactured by an Illinois subsidiary of the Massachusetts insured and brought suit under Louisiana's direct action statute. The direct action exclusion was valid under Illinois and Massachusetts law. This Court held that application of the Louisiana statute did not violate due process because the forum state had a legitimate interest in "safe guarding the rights of persons injured there." *Id.* at 73. The Court did not make any distinction between residents and non-residents in deciding the constitutional issue.

> "Louisiana's direct action statute is not a mere intermeddling in affairs beyond her boundaries which are not concern of hers. Persons injured or billed in Louisiana are most likely to be Louisiana residents and even if not, Louisiana may have to care for them. Serious injuries may require treatment in Louisiana homes or hospitals by Louisiana doctors. The injured may be destitute. They may be compelled to call upon friends, relatives, or the public for help."

Id. at 72.

Synthesizing the Court's opinions, Professor Leflar wrote:

> "The *Dick*, *Yates* and *Watson* cases, taken together, suggest a constitutional rule that is fairly simple even though difficult to apply in practice. A frequent statement of it is that a state may apply its own (or any other state's) substantive law to govern a particular transaction if, but only if, significant factual elements in the transaction are connected with the state whose law is to be applied."

Leflar, *"Constitutional Limits on Free Choice of Law,"* 28 *Law & Contemporary Problems*, 706, 702 (1963).

The *Watson* holding was further strengthened by the later decision in *Clay v. Sun Insurance Office, Ltd.*, 377 U.S. 179 (1964). There a Florida resident brought suit in Florida on an insurance policy which had been purchased while the insured lived in Illinois. The loss occurred in Florida. The policy contained a twelve-month suit clause valid in Illinois but void in Florida. This Court held that application of Florida law was wholly consistent with the requirement of both the Due Process and Full Faith and Credit clauses of the constitution. The Court found no conflict with *Dick*, or *Delta & Pine Land Co.*, relying heavily on *Watson* and on *Pacific Employer Ins. Co. v. Industrial Accident Commission*, 306 U.S. 493 (1939).[4]

The holding in the case at bar is fully consistent with the facts and principles in the foregoing decisions. Like Louisiana in *Watson*, Minnesota has a legitimate interest in protecting the recovery rights of persons injured there. Mrs. Hime, for example, was hospitalized 32 days in Minnesota and required medical treatment from a number of Minnesota doctors. A Minnesota driver was involved who could have been held liable for the full judgment without recourse for contribution against the Florida driver who was primarily responsible for the Minnesota accident. The policy was written to be performed anywhere loss or claim occurred within the United States. The primary performance to date has been in Minnesota–where State Farm has

[4] *Pacific Employers* is a workmen's compensation case where the Court held that nothing in either the Due Process or Full Faith and Credit clauses precluded California from applying its own law where the injured employee was regularly employed by the insured company at its home office in Massachusetts, was in California on a temporary assignment, and was at all time subject to direction and control from the home office.

paid some no-fault benefits and has claimed subrogation rights for same.

The policy was written to cover accident losses in any state, including Minnesota. Minnesota has a significant interest in regulating insurance policies on vehicles involved in accidents in the state, such that coverage is available to satisfy claims and judgments validly obtained in her courts. State Farm Fire and Casualty Company is licensed and carries on substantial business in the Minnesota insurance market.

While the facts fully demonstrate contacts and interests of the forum state sufficient to stand comparison with any of the Court's decisions, no detailed "stacking" of factors or comparisons is necessary. It is sufficient that Minnesota has a substantial connection with the facts and issues of the litigated case. The fact that the Himes were not residents is not determinative. *Watson* made clear that a state's interest in tort recoveries for persons injured within its boundaries is the same both as to residents and non-residents.

Petitioner suggests a "fairness" argument, asserting that such coverage was not contemplated nor charged for by premium. No such evidence was presented to the trial court. In any case, this type of argument has been rejected by the Court. In *Clay*, the Court quoted with approval from Justice Black's dissent in the previous hearing of the same case:

> "Insurance companies, like other contractors, do not confine their contractual activities and obligations within state boundaries. They sell to customers who are promised protection in states far away from the place where the contract is made."

Clay v. Sun Insurance Office, Ltd., 363 U.S. at 221 (1960).

In *Clay* Justice Black pointed out what is intuitively obvious–that the carriers know their insureds may be sued in

other states, and that the courts of those states will feel bound by their own law. *Clay, supra*, at 221. Insurance companies are never "unfairly surprised" by being held to liability for automobile accidents under the law of a particular state. See, R. Weintraub, *Commentary on the Conflict of Laws*, 206 (1971). Petitioner might have stipulated Florida law as controlling in the contract, but this would preclude it from the benefit of defenses in other states unavailable in Florida, such as guest statutes, absolute contributory negligence, and the like.

Petitioner correctly notes that two states have, on similar facts, arrived at conclusions opposite to that reached by the Minnesota Supreme Court. (Pet. Brief at 13). However, other states have reached the same result as the Minnesota Court.[5] It must be emphasized that all of these state courts reached their decisions on the basis of their respective choice-of-law methodologies. None were decided on constitutional grounds, and none of those courts, faced with a motor vehicle accident in their state, felt constitutionally compelled to apply foreign law.

There is no claim that the Minnesota court used incorrect or unconstitutional legal principles. Indeed, Petitioner appears to reject any concept of basic constitutional principles, preferring instead to urge review of choice-of-law questions on a case-by-case method, based only on their congruency with fact patterns in three cases which Petitioner has arbitrarily designated as "most frequently cited." The "substantial connection" rule has proved workable to both courts and legislators,[6] and Petitioner

[5] *Bray v. Cox*, 39 App. Div. 2d 299, 333 N.Y.S.2d 783 (1972); *Hurtado v. Superior Court*, 11 Cal.3d 574, 522 P. 2d 666, 114 Cal. Rptr. 106 (1974); Arnett v. Thompson, 433 S.W.2d 109 (Ky. 1968); *Griggs v. Riley*, 489 S.W.2d 469 (Mo. Ct. Appl. 1972).

[6] See, Leflar, *Choice-of-Law Statutes*, 44 *Tenn. L. Rev.*, 951, 953 (1977).

has offered no substantial reason to create uncertainty in a settled area of the law. Accepting Petitioner's position would inevitably inject an unnecessary constitutional issue into the thousands of otherwise routine non-resident motor vehicle collision claims now processed in the state courts.

(g) CONCLUSION

The application of Minnesota law in the case at bar was well within the constituional limits set by this Court, and the Petition should be denied.

Respectfully submitted,
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